

Douglas R. Brown, Esq., NSB #7620  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Suite 300  
Reno, NV 89519  
*drb@lge.net*  
Telephone: (775) 786-6868  
Facsimile: (775) 786-9716

FAEGRE BAKER DANIELS LLP  
Jerome A. Miranowski, Esq.  
*jerome.miranowski@FaegreBD.com*  
Jane E. Maschka, Esq.  
*Jane.maschka@FaegreBD.com*  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402  
Telephone: (612) 766-7000  
Facsimile: (612) 766-1600

*Attorneys for Petitioner Leon Mark Kizer*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Leon Mark Kizer,

Petitioner,

v.

United States Environmental  
Protection Agency,

Respondent.

Case No. 3:16-CV-00395-LRH-WGC

**STIPULATION FOR EXTENSION OF TIME  
TO FILE DISCOVERY PLAN AND  
SCHEDULING ORDER**

According to Local Rule 26-1, the Parties must submit a stipulated discovery plan and scheduling order within 44 days of the filing of the Answer. The Parties have previously requested, and the Court has granted, an extension of the deadline seven times to allow for a possible resolution in this matter: first to December 12, 2016, second to March 13, 2017, third to June 12, 2017, fourth to September 10, 2017, fifth to December 11, 2017, sixth to March 11, 2018, and seventh to June 7, 2018. There has been substantial progress towards this resolution, but as discussed below, the final resolution of this matter has been delayed by developments in a separate litigation.

1 Now, the Parties, by and through their respective counsel, have agreed and hereby  
2 stipulate pursuant to Federal Rule of Civil Procedure Rule 6 (b) and Local Rules IA 6-1, IA 6-2,  
3 7-1, and 26-4 that the deadline for filing a stipulated discovery plan and scheduling order is  
4 hereby extended 90 days to **September 5, 2018**.

5 A. This petition involves an objection to a compliance order (the "Compliance Order")  
6 issued by the United States Environmental Protection Agency ("EPA") to Petitioner/Appellee  
7 Leon Mark Kizer and the Pine View Estates Homeowner's Association ("PVHOA").

8 B. The resolution of this petition, in the manner the Parties have been anticipating,  
9 hinges on the settlement of a related matter. On September 12, 2017, Kizer and PVHOA  
10 entered into a settlement agreement ("Settlement Agreement") in *Kizer v. PTP, Inc. et al*, Case  
11 No. 3:15-CV-00120-RCJ-WGC (D. Nev.) (ECF No. 338). There are over 200 defendants in *Kizer v.*  
12 *PTP, Inc.*, including all of the individual homeowners in the PVHOA, and the Bureau of Indian  
13 Affairs ("BIA"). The Settlement Agreement was contingent on the BIA's approval of the  
14 transfer of common areas from trust to fee – the BIA holds title to the land comprising the  
15 PVHOA in trust on behalf of Kizer. The fee lands would serve as collateral for a loan to fund  
16 the obligations as detailed in the Compliance Order. The BIA approved said trust-to-fee  
17 transfer on October 18, 2017 and that transfer was contemplated to occur by the end of  
18 November, 2017.

19 C. On November 8, 2017, the Hon. Robert C. Jones confirmed and approved the  
20 Settlement Agreement. See *Kizer v. PTP, Inc.*, Case No. 3:15-CV-00120-RCJ-WGC (D. Nev.) (ECF  
21 No. 452).

22 D. However, subsequent to Judge Jones' approval of the Settlement Agreement, a  
23 dispute arose between Kizer and some of the defendants in the implementation of the  
24 Settlement Agreement; specifically, attorneys representing the title insurers as well as  
25 attorneys representing individual homeowners, have asserted that the BIA has not fully  
26 complied with the terms of the Settlement Agreement, and by extension, the requirements of  
27 the National Historic Preservation Act ("NHPA") in effecting the transfer of land.

28 E. On April 18, 2018 counsel for Kizer sent a letter to counsel for the title insurance

1 companies and counsel for defendants in *Kizer v. PTP, Inc.* documenting the points of dispute  
2 regarding implementation of the Settlement Agreement, setting forth Kizer's position on  
3 those points, and proposing final steps to resolve all points of dispute, including actions to be  
4 undertaken by BIA at Kizer's request to comply with NHPA. In closing his letter, counsel for  
5 Kizer requested that the title insurance company counsel and all defense counsel notify him  
6 immediately of any other points of dispute or any objections to the proposed course of action  
7 set forth in the April 18th letter. As of the submission of this stipulation, counsel for Kizer is  
8 not aware of any other dispute points or objections to Kizer's proposed course of action as set  
9 forth in the April 18th letter being raised by counsel for the title insurance companies or any  
10 defense counsel. Meaning, the BIA's completion of the obligations under the NHPA and the  
11 resulting trust-to-fee transfer is the last major action item remaining before the consent  
12 decree process and the resolution of this petition as set forth in Para. F, *infra*.

13 F. If and when the settlement closes in *Kizer v. PTP, Inc.*, the parties in the petition  
14 anticipate lodging a consent decree in another related case, *Pine View Estates Homeowner's*  
15 *Assoc. v. EPA*, Case No. 3:16-CV-00402-MMD-WGC (D. Nev.), relating to and addressing the  
16 Compliance Order. The consent decree will need to be negotiated and once finalized and  
17 approved by officials at EPA and the United States Department of Justice, will be lodged with  
18 the Court. The Parties will then request that the Court approve and enter the consent decree.  
19 The consent decree will vacate the Compliance Order as to Kizer and will make the PVHOA  
20 solely responsible for the wastewater treatment system that is the subject of the Compliance  
21 Order. The approval and entry of the anticipated consent decree vacating the Compliance  
22 Order as to Kizer will moot this petition.

23 ///

24 ///

1 G. To preserve judicial resources, the Parties in this case stipulate to extend the  
2 stipulated discovery order and scheduling order deadlines until **September 5, 2018**. The  
3 Parties will notify the Court if the settlement closes in the meantime or if the Parties will  
4 proceed with this petition.

5  
6 Dated this 5th day of June, 2018.

7  
8 Faegre Baker Daniels LLP  
9 *Attorneys for Petitioner*

Jeffrey H. Wood  
Acting Assistant Attorney General  
Environment & Natural Resources Division  
10 *Attorney for Respondent*

11  
12 By: /s/ Jerome A. Miranowski  
Jerome A. Miranowski  
2200 Wells Fargo Center  
13 90 South 7<sup>th</sup> Street  
Minneapolis, MN 55402  
14 (612) 766-7000  
Jerome.miranowski@faegrebd.com

By: /s/Michael C. Martinez  
Michael C. Martinez (CA # 275581)  
Environmental Defense Section  
601 D Street N.W., Suite 8000  
Washington D.C. 20004  
15 (202) 514-0135  
Michael.C.Martinez@usdoj.gov

16  
17  
18 IT IS SO ORDERED:

19  
20 William G. Cobb

21 UNITED STATES MAGISTRATE JUDGE

22 DATED: June 6, 2018.  
23  
24  
25  
26  
27  
28